
IN THE MATTER

OF

**ROBERT HOSLEY and
DEBRA MARTIN**
Lincoln Park Board of Education
Morris County

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**BEFORE THE
SCHOOL ETHICS COMMISSION**

Docket No.: C13/C16-97

DECISION

PROCEDURAL HISTORY

This matter arises from two complaints: C13-97 and C16-97. Emily Schulz filed C13-97 on May 22, 1997, against Lincoln Park board members Robert Hosley and Debra Martin separately. C16-97 was filed on May 28, 1997, by Lynn Walker, Susan Boykas, and Maria Sisti against Robert Hosley and Debra Martin, separately. The Commission consolidated the complaints since they presented the same facts and issue for resolution. Specifically, the complaints allege that respondents violated the School Ethics Act, N.J.S.A. 18A:12-21 et seq. when they voted against the resolution establishing a voucher program in Lincoln Park because Mr. Hosley's spouse and Ms. Martin belong to the New Jersey Education Association (NJEA), which opposes vouchers.

Respondents filed timely answers with the School Ethics Commission admitting to having voted on the resolution in question, but denying that doing so violated the School Ethics Act. The Commission investigated the complaints and notified the parties that it would discuss the matter at the Commission's October 28, 1997, meeting. Susan Boykas and Maria Sisti appeared before the Commission with Robert Hosley and Debra Martin. The Commission rendered this decision on November 25, 1997.

FACTS

The Commission finds the material facts in this case to be undisputed. Robert Hosley is a member of the Lincoln Park board of Education. He was elected President at the board's April 22, 1997, reorganization meeting. His spouse is an NJEA member employed by another school district in another county. Debra Martin became a member of the Lincoln Park Board of Education on April 22, 1997. She is a teacher in the West Essex Regional School District in North Caldwell, Essex County. She is a member of the NJEA.

On February 11, 1997, the Lincoln Park Board of Education adopted a policy whereby it would use school district funds to give district families vouchers to send their

children to a private high school rather than the sending district school, Boonton High School.

The NJEA opposes voucher programs and opposed the policy adopted by the board. They did so in paid advertisements in the press. On April 2, 1997, the board's labor negotiator issued a legal opinion to the board. It stated that board members who belonged to the NJEA or had spouses who belonged to the NJEA should not vote or participate in discussions on the issue of vouchers. He opined that the public may reasonably conclude that board members conflicted due to their relationship to the NJEA may inappropriately attempt to sway board discussions away from legitimate benefits of the voucher system. However, he cautioned that the Commission has not yet ruled on this issue.

Mr. Hosley sent him a response on April 7, 1997, disagreeing with his opinion. It stated that the voucher policy is a matter of great public interest and that the NJEA's stance on the issue would not impair the independence of his vote. On April 8, 1997, the labor negotiator wrote back indicating that if Mr. Hosley disagreed, he could seek an advisory opinion from the Commission. Also, on April 7, 1997, the Commissioner of Education, on the advice of New Jersey Attorney General, sent a letter to the board stating that there was no statutory authority for a voucher program. It further stated that the board should "cease and desist" implementing the voucher program policy.

On April 8, 1997, the board voted on a resolution to amend the voucher policy to privately fund the voucher program, but operate it through the Lincoln Park board. Mr. Hosley abstained from voting on the policy. Mr. Hosley also abstained from participating in the discussion, but voiced displeasure about the board attorney's opinion. The board approved that policy.

The labor negotiator sent another opinion for the new board that took office on April 22, 1997. In the April 22, 1997 opinion, he advised that the prior board had determined that those with NJEA ties were conflicted from voting on the voucher program. However, he left the board members to determine whether they felt there was a personal or financial involvement that would reasonably be expected to impair such members' objectivity. He added that the Commissioner's decision rendered the voucher program invalid and the entire issue moot.

On May 13, 1997, Debra Martin and Robert Hosley participated in the discussion and voted on the resolution to repeal the voucher program policy from the board's manual. Although there is some dispute as to the current status of the program because some board members believe that it takes three readings to repeal a policy, the Commissioner's decision appears to render the program invalid.

The complainants now ask the Commission to find that Ms. Martin and Mr. Hosley violated the School Ethics Act when they voted to repeal the voucher program policy from the board's manual on May 13, 1997.

ANALYSIS

The issue before the Commission is whether respondents violated N.J.S.A. 18A:12-24(c) of the School Ethics Act by voting to repeal the voucher program policy.

Respondent Robert Hosley makes several arguments in his defense. First, he states that he was acting pursuant to the directive of the Commissioner of Education that said that the board had to stop the program. Second, he states that his objectivity on this issue was not in any way impaired by the fact that his spouse belongs to NJEA. Third, he states that prohibiting him from debating and voting on a public policy issue of such great importance would violate his constitutional rights to freedom of speech and freedom of association. Last, he argues that there are numerous organizations in the state and across the country that have taken a position against vouchers, including the New Jersey School Boards Association. Yet, no one is arguing that board members with ties to such organizations should be barred from voting on the issue. Respondent Debra Martin also argues in her defense that when she voted on May 13, 1997, she was acting pursuant to the Commissioner's April 7, 1997, ruling. She further argues that she voted pursuant to the second opinion of the labor negotiator that advised, "if objectivity or independence are not impaired [by membership in the NJEA], then board members should participate and vote their conscience on the voucher program."

N.J.S.A. 18A: 12-24(c) of the School Ethics Act provides:

No school official shall act in his official capacity in any matter where he, a member of his immediate family, or a business organization in which he has an interest, has a direct or indirect financial or personal involvement that might reasonably be expected to impair his objectivity or independence of judgment.

In Advisory Opinion A10-93(b)/A07-94, the Commission interpreted N.J.S.A. 18A:12-24(c). It opined that a board member would violate N.J.S.A. 18A:12-24(c) if he were to serve on the negotiating committee or vote on a collective bargaining agreement if he or his spouse were a member of the same statewide general union as the local bargaining unit with which the board was negotiating. The Commission so reasoned because local bargaining units look to settlement averages within the general union in order to determine what increase they should demand. Thus, the board member benefits financially, albeit indirectly, from high salary increases in his own district since they have the effect of driving up salary increases within the statewide general union. See also, In the Matter of Frank Pannucci, C08-96, (November 26, 1996).

In his opinion, the board's labor negotiator reasoned that, just as in collective bargaining, a board member who is or has a spouse who is an NJEA member, could not reasonably be expected to be objective on the issue of vouchers because of the NJEA's strong stance against vouchers. He further reasoned that the public may reasonably conclude that board members conflicted due to their relationship with the NJEA may inappropriately attempt to sway board discussions away from the legitimate benefits of

the voucher system. In support of their complaint, complainants adopt the arguments of the labor negotiator and also point to statements published by the NJEA indicating that the voucher policy of the board would negatively impact job security for NJEA members and the operation of public schools. Complainants argue that such statements show that the board members have a personal or financial involvement under the Act.

The Commission does not agree that it can apply the same analysis to the voucher issue that it applies to collective bargaining. There is no similar connection between the vote on vouchers in Lincoln Park and the school districts in which Mr. Hosley's spouse and Ms. Martin serve. There is no information indicating that the school districts to which the respondents have ties are considering voucher programs or will otherwise be affected by whether vouchers succeed in Lincoln Park. There is also no information to indicate that Mr. Hosley's spouse or Ms. Martin had any part in formulating the NJEA's position; they are only members of the association. Thus, the Commission finds that there is no information to support a finding that Mr. Hosley, his spouse or Ms. Martin had a personal or financial involvement reasonably expected to impair Mr. Hosley's or Ms. Martin's objectivity as set forth in the Act.

In addition, the Commission finds it significant that the issue of vouchers is not a personal issue, but a public policy issue. The New Jersey Supreme Court, interpreting a provision similar to N.J.S.A. 18A:12-24(c) in the Municipal Land Use Law¹ stated:

An actual conflict of interest is not the decisive factor, nor is 'whether the public servant succumbs to the temptation,' but rather whether there is a potential for conflict. A conflicting interest arises when the public official has an interest not shared in common with the other members of the public. Another way of analyzing the issue is to understand '[t]here cannot be a conflict of interest where there do not exist, realistically, contradictory desires tugging the official in the opposite directions.' Wyzkowski v. Rizas, 132 N.J. 509, 524 (1993)(citations omitted).

The question of whether a board should use public school funds to fund vouchers to send students to private school is of great interest to all members of the public. The board members in question share an interest with the public in determining whether it is best for the Lincoln Park school district to continue to send its high school students to Boonton or use the money to provide vouchers to parents to send their children to private school if they so desire. Board members can share the same interest and have differing points of view as to how to best serve that interest. The alleged financial impact upon board members in question, stated to be the NJEA's fear of a loss of jobs, is simply too speculative for the Commission to rule that it constitutes a conflicting interest tugging the board members in an opposite direction. The fact that the New Jersey School Boards Association also opposes vouchers also makes it difficult to argue that the NJEA's interest is a conflicting interest.

¹ N.J.S.A. 40:55D-23b of the Municipal Land Use Law prohibits a planning board member from acting on any matter in which the member has, either directly or indirectly, any personal or financial interest.

It is important to note that the board members' points of view may be swayed by information from any of the numerous organizations that have taken a position on this issue, including the New Jersey School Boards Association. The Commission cannot single out members of the NJEA and prohibit only them from voting when so many other organizations have taken a position. Thus, the Commission also finds that it would unduly restrict board members from debating broad public policy issues to rule that respondents' ties with the NJEA would create such a conflict of interest that respondents could not vote on or discuss the adoption or repeal of a voucher system. Indeed, such a ruling would create a slippery slope that would cripple boards from serving their function to debate public policy issues and make decisions in the best interest of the students. This is not the intent of the Act.

Last, the Commission finds some merit to respondents' argument regarding the Commissioner of Education's ruling. Since he said there was no statutory authority for the program and that the board had to cease and desist implementing it, the board was obligated to repeal the voucher program policy. Failing to do so would apparently result in noncompliance with a Department of Education directive. However, the Commission does not base its decision on this ground since there is some dispute among board members as to whether the Commissioner's ruling left the door open for the board to pursue private donations to fund the vouchers. The Commission will not become embroiled in that controversy. Thus, for the other reasons set forth above, the Commission finds that the respondents did not violate the Act when they voted to repeal the policy on May 13, 1997.

CONCLUSION

For all the foregoing reasons, the Commission concludes that respondents did not have a personal or financial involvement that would reasonably be expected to impair their objectivity in voting for repeal of the voucher program policy. It therefore finds no probable cause to credit the allegations that respondents violated N.J.S.A. 18A:12-24(c) of the School Ethics Act and dismisses the charges against them.

This decision constitutes final agency action and thus may be appealed directly to the Appellate Division of the Superior Court.

Paul C. Garbarini
Chairman

Resolution Adopting Decision -- C13/C16-97

Whereas, the School Ethics Commission has considered the pleadings filed by the parties and the documents submitted in support thereof and has considered the testimony of the parties; and

Whereas, the Commission found no probable cause to credit the allegations in the complaint that respondents violated N.J.S.A. 18A:12-24(c) of the School Ethics Act; and

Whereas, the Commission has reviewed the proposed decision of its staff setting forth the reasons for its conclusion; and

Whereas, the Commission agrees with the proposed decision;

Now Therefore Be It Resolved that the Commission adopts the proposed decision referenced as its decision in this matter finding no probable cause and dismissing the complaint against Robert Hosley and Debra Martin.

Paul C. Garbarini, Chairman

I hereby certify that the Resolution was
duly adopted by the School Ethics
Commission at it public meeting on
December 16, 1997.

Lisa James-Beavers
Executive Director

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